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Original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Settlement Rates	)	IB Docket No. 96-261
	)	
Petition of AT&T, MCI WorldCom	)	DA 99-479
and Sprint for Enforcement of	)	
International Settlements	)	
Benchmark Rates for Services	)	
with the Netherlands Antilles	)	

REPLY OF AT&T, MCI WORLDCOM, AND SPRINT

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May 13, 1999

TABLE OF CONTENTS

SUMMARY

In response to the Petitioners' request for enforcement of the *Benchmarks Order* for U.S. carriers' settlement arrangements with the Netherlands Antilles, the Commenters make numerous baseless and immaterial claims in an attempt further to delay implementation of the *Benchmarks Order* on this route. The Commission should reject the Commenters' claims.

Even taking the Commenters' assertions at face value, the uncontested factual record demonstrates that Petitioners have attempted to negotiate with Antelecom for at least twelve months in accordance with the *Benchmarks Order*. Antelecom has repeatedly refused to agree, and the Commenters confirm that they will not agree, to a settlement rate at $0.15 effective January 1, 1999. Thus, enforcement action by the Commission is necessary in order to allow Petitioners to comply with the rules set forth in the *Benchmarks Order*. The Commission should not permit the Commenters to create further delay.

The Commenters' assertion that the Netherlands Antilles should receive "flexible" treatment in the application of the *Benchmarks Order* is inconsistent with the general rules and waiver standard set forth in that *Order* and with the D.C. Circuit decision upholding that *Order*. Indeed, the Commenters acknowledge that the Netherlands Antilles will not experience a sufficient reduction in telecommunications revenues to support any longer transition period and submit no facts or cost data in support of their claim that the costs of terminating traffic in the Netherlands Antilles are higher than the $0.15 benchmark. The Commenters' request for a "waiver of the waiver" would eviscerate the general rules set forth in the *Benchmarks Order*, and should be rejected.

Finally, the Commenters' attempt to exclude certain categories of IMTS traffic, such as callback, "refile" and "reorigination", from the benchmark rate is baseless. As the *Benchmarks*

Order makes clear, foreign carriers should not receive above-cost subsidies from U.S. carriers for the termination of *any* IMTS traffic. Moreover, the Commission has repeatedly indicated its support for alternative routing services that increase competitive pressure in the global telecommunications market.

In sum, the Commission should reject the Commenters' attempt to delay implementation of the *Benchmarks Order* by expeditiously ordering all U.S. carriers to settle at the $0.15 benchmark rate with Antelecom effective January 1, 1999.

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REPLY OF AT&T, MCI WORLDCOM, AND SPRINT

AT&T Corporation ("AT&T"), MCI WorldCom, Inc. ("MCI WorldCom") and Sprint Communications Company L.P. ("Sprint") (collectively, "U.S. carriers" or "Petitioners") hereby submit this Reply to the Joint Protective Comments ("Comments") of the Ministry of Traffic and Transportation of the Netherlands Antilles and Antelecom N.V. ("Antelecom") (collectively "the Commenters") to the Petition requesting enforcement of the benchmark settlement rate of $0.15 with respect to switched services between the U.S. and Antelecom.

Petitioners have demonstrated that they are unable to negotiate the benchmark rate on this route with Antelecom effective January 1, 1999, and Commenters confirm that Antelecom remains unwilling to enter into any such agreement. Accordingly, to reduce settlement rates on this route to more cost-based levels, the Commission should now enforce the *Benchmarks Order* expeditiously by requiring all U.S. carriers to pay settlement rates no higher

than the applicable benchmark rate of $0.15 for all traffic exchanged with the Netherlands Antilles from January 1, 1999.[1]

I. Despite Petitioners' Repeated Good Faith Efforts, Antelecom Has Refused to Negotiate Benchmark Settlement Rates.

Petitioners have demonstrated in their affidavit that they are unable to negotiate agreements with Antelecom to reduce the settlement rate for switched services between the United States and the Netherlands Antilles to $0.15 effective January 1, 1999, as required by the *Benchmarks Order*. Antelecom has repeatedly refused to agree to a settlement rate at $0.15 effective January 1, 1999. Indeed, the Commenters confirm that Antelecom will not agree to such a settlement rate by stating first (p. 17) that it will agree only to a settlement rate of $0.19 effective January 1, 2000, and second (p. 23) that a benchmark rate should apply only to a portion of IMTS calls.

In light of these facts, the Commenters' assertion (p. 5) that Petitioners have not met their supposed "burden" of negotiating settlement rates before seeking enforcement rings hollow. The *Benchmarks Order* contemplates that when a foreign correspondent repeatedly rejects U.S. carriers' attempts to achieve an agreement that would comply with the Commission's rules, U.S. carriers may request the Commission to take stronger measures.[2] Neither the *Benchmarks Order* nor the D.C. Circuit opinion upholding that decision imposes any "burden" on Petitioners to negotiate *ad infinitum* with a foreign carrier like Antelecom that repeatedly and publicly refuses to agree to the benchmark rate.

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[1] *International Settlement Rates*, 12 FCC Rcd 19806 (1997) ("*Benchmarks Order*"), recon. pending, *aff'd sub nom. Cable & Wireless P.L.C. v. FCC et al.*, 166 F.3d 1224 (D.C. Cir. 1999).

While contending (p. 8) that U.S. carriers have "utterly fail[ed]" to make good faith attempts to negotiate the benchmark rate with Antelecom, the Commenters contest none of the facts set forth in the affidavit by Thomas R. Luciano of AT&T demonstrating that AT&T has attempted to negotiate settlement rates with Antelecom in accordance with the requirements of the *Benchmarks Order* and that Antelecom has failed to respond to those efforts. As further demonstrated by the attached affidavit by Robert Santana of AT&T, AT&T's representatives traveled to Netherlands Antilles on no fewer than four separate occasions during 1998 in unsuccessful efforts to obtain Antelecom's agreement to benchmark rates.[3] Mr. Santana further attests that he has made continued efforts to arrange further meetings, but has been rebuffed by two last-minute cancellations by Antelecom -- including the March 2, 1999 cancellation acknowledged in the Statement of Mr. Gomez.[4]

Ironically, the Commenters complain (p. 11) that Antelecom's first meeting with AT&T after issuance of the Benchmarks Order did not occur until March 1998 ("only nine months *before* the end of the transition period") and that AT&T "thereafter engaged in only four contacts with Antelecom (without explanation as to the lack of more vigorous efforts)." In fact,

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2 *Benchmarks Order*, ¶ 186.

3 *See* Affidavit of Thomas R. Luciano of AT&T (dated Feb. 17, 1999) (filed herein as an attachment to the Petition); Affidavit of Robert Santana of AT&T (dated May 12, 1999) ("Santana Aff.") (attached hereto), at ¶ 3.

4 *Id.*, ¶ 4; Statement of Mr. Lyrio A. G. Gomez, ¶¶ 9-10. The Commenters assert that they wish to reach a private agreement with U.S. carriers (p. 22). However, nothing in the current process keeps the parties from continuing discussions. Indeed, both AT&T and MCI WorldCom attempted to meet with Antelecom during the week of meetings in Washington, D.C. known as the Global Traffic Meeting, held from May 3-7, 1999. Unfortunately, Antelecom deferred further discussions to a meeting organized by its attorneys. *See* Santana Aff., ¶ 6.

Commenters merely confirm that Petitioners made substantial efforts to negotiate a benchmark rate with Antelecom. Significantly, they make no claim that even more extensive efforts by any U.S. Carriers would have been successful in obtaining Antelecom's agreement to the $0.15 benchmark rate, effective January 1, 1999. Indeed, the Commenters confirm that even now they will not agree to settle traffic at the benchmark settlement rate. *See* Comments at pp. 22-24. Thus, their contention that U.S. carriers should continue to hold fruitless meetings for many months before and after the effectiveness of a benchmark rate is nothing more than a transparent attempt to delay for as long as possible U.S. carriers' ability to comply with the Commission's settlement rate requirements as set forth in the *Benchmarks Order*.[5]

The Commenters next complain (p. 10) that Antelecom did not have sufficient notice of the requirements imposed on U.S. carriers in the *Benchmarks Order*. This claim is contradicted by the Statement of Mr. Gomez, the Vice President of Antelecom, that he had "tak[en] notice of the August 1997 Benchmarks Order of the U.S. Federal Communications Commission (FCC)" by "late 1997", that he then sought to "initiate a revised agreement" with

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[5] The Commenters make the further baseless complaint (p. 8) that AT&T "exceeded the scheme of the *Benchmarks Order*" by seeking interim reductions in the settlement rate with Netherland Antilles beginning in mid-1998. AT&T sought to negotiate an orderly transition to benchmarks in accordance with the intent of the *Benchmarks Order* "to ease the transition to a more cost-based system of settlement rates" and longstanding Commission policy encouraging reductions in settlement rates to cost-based levels. *Benchmarks Order*, ¶ 170. *See also, Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, 3556 (1991) (directing U.S. carriers to "negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trends"). AT&T thus proposed to reduce the ten-year old $0.38 settlement rate to $0.225 effective from July 1998 pending implementation of the benchmark rate on January 1, 1999. Santana Aff., ¶ 3. Additionally, the Commenters show no lack of good faith by AT&T in connection with the failure to reach agreement on a new operating agreement when Antelecom has yet to provide comments on a draft submitted by AT&T during the summer of 1998. *See, id.*, ¶ 2.

U.S. carriers, and that Antelecom subsequently discussed settlement rates with AT&T on various occasions during 1998.[6] His statement leaves no doubt that Antelecom received timely notice of the Commission benchmarks.

Equally unfounded is the Commenters claim (pp. 11-12) that the Commission has also not made sufficient efforts to work with the Government of the Netherlands Antilles. The letter sent to the Netherlands Antilles Ministry by the Commission was received over two months before the filing of the Petition, allowing for more than adequate time for an agreement to be reached, if it were possible. The Commenters claim (p. 13) that the D.C. Circuit somehow requires more from the FCC is misplaced, as the Court clearly contemplated that the Commission would take precisely the action that Petitioners are asking for here.[7]

Nor is it relevant that thus far Petitioners have sought enforcement with regard to three countries, including the Netherlands Antilles. (*See* Joint Protective Comments, pp. 13-14.) The *Benchmarks Order* requires U.S. carriers to negotiate benchmark rates with their correspondents and "rel[ies] primarily on [] a carrier-initiated enforcement process."[8] To obtain

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6 Statement of Mr. Lyrio A. G. Gomez, ¶ 3.

7 The D.C. Circuit noted that "the Order authorizes 'enforcement measures ... to ensure that no *U.S. carrier* pays that foreign correspondent an amount exceeding the lawful settlement rate benchmark.'" *Cable & Wireless*, 166 F.3d at 1230. The Court further recognized, "[t]o be sure, the practical effect of the Order will be to reduce settlement rates charged by foreign carriers", *Id.*, and that "[w]e have no doubt that the Commission has authority to prescribe maximum settlement rates," *Id.* at 1232.

The Commenters claim in footnote 21 that the *Cable & Wireless* decision somehow prohibits the Commission from taking enforcement action. When read in context, however, it is clear that the language quoted by the Commenters simply supports the Court's finding that the Commission in the *Benchmarks Order* was not impermissibly asserting jurisdiction over foreign governments. *See id.*. at 1229-30.

8 *Benchmarks Order*, ¶ 186.

enforcement, U.S. carriers are thus required to determine "[w]hen a foreign correspondent fails to respond" to their efforts to negotiate benchmark rates in compliance with the *Benchmarks Order*.[9] The Petition does not preclude Petitioners from filing similar petitions with respect to foreign correspondents in other upper-income countries -- as footnote 12 of the Petition very clearly states -- and Petitioners will file further Petitions if such action is necessary.

In sum, the Commission should reject the Commenters request that the Petition be dismissed as premature or held in abeyance. The uncontested factual record demonstrates that AT&T has attempted to negotiate with Antelecom for at least twelve months in accordance with the requirements of the *Benchmarks Order*, and that Antelecom has refused to agree, and the Commenters assert that they will not agree, to a settlement rate at $0.15 effective January 1, 1999. Petitioners respectfully submit that, under these circumstances, enforcement action by the Commission is required in order to allow Petitioners to comply with the rules set forth in the Commission's *Benchmarks Order*.

II. The Commenters Fail to Justify Any Waiver of the *Benchmarks Order*.

The Commission found, and the D.C. Circuit affirmed, that the Tariff Component Pricing Methodology for the calculation of benchmark rates "more than fully compensates" foreign carriers such as Antelecom and that the benchmark transition schedules take full account of foreign carriers' ability to adopt those rates without undue disruption of their operations.[10]

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9 *Id.*

10 *Cable and Wireless,* 166 F.3d at 1232-33; *Benchmarks Order*, ¶ 171 ("the benchmarks are . . . substantially above any reasonable measure of incremental costs"). *See also, id.* at ¶¶ 87, 167.

Although an interested party may seek a waiver of the rules and policies if it can demonstrate that it meets the specific standard set forth in the *Order*, the Commenters' requested "flexibility" (pp. 15-21) in the application of the *Benchmarks Order* to U.S. carriers' accounting rate arrangements with the Netherlands Antilles fails to satisfy that standard. As such, grant of the Commenters' requested "flexibility"would run counter to the public interest in lowering settlement rates to more cost-based levels and would eviscerate the *Benchmarks Order*..

The *Benchmarks Order* sets forth clear standards for the waiver of the standard benchmark rates and transition schedules. Thus, a waiver may be appropriate where an interested party demonstrates that the incremental cost of terminating international traffic in the relevant country is higher than the established benchmark and where the affected foreign country would experience a reduction in its annual telecommunications revenues of greater than 20 percent as the result of the implementation of the lower benchmark rate.[11] Commenters fail to satisfy either of these criteria.

First, the Commenters' assertion (pp. 15-16) that Netherlands Antilles does not qualify as an upper income country because of lower teledensity is simply inapposite. For purposes of determining which countries qualify as "upper income" under the *Benchmarks Order,* the Commission adopted World Bank and ITU country classifications, which in turn are based upon per capita GNP, not teledensity. The *Benchmarks Order* specifically rejected the argument "that teledensity would be a better basis for categorizing countries" and instead found that "economic development provides a reasonable lowest common denominator for determining a country's ability to transition to a more cost-based system of settlement rates without undue

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[11] *Benchmarks Order* at ¶¶ 88, 174.

disruption to its telecommunications network."[12] The Commission also found that the World Bank's classification of countries by per capita GNP is an objective, internationally accepted measurement of countries' level of economic development.[13]

The Commenters next contend (p. 20) that if the Commission refuses to move the Netherlands Antilles to the second-tier benchmark category, it should still grant Antelecom additional transition time. However, the Commenters themselves acknowledge (*id.*) that they cannot meet the Commission's relevant standard for such an exception. They estimate (p. 18) that the Netherlands Antilles will experience an 8 to 10 percent reduction in its annual telecommunications revenues from implementation of the benchmark, which falls far short of the 20 percent threshold required by the *Benchmarks Order*.

Finally, the Commenters' claim (p. 19) that their costs are higher than the benchmark in the Netherlands Antilles is supported by neither facts nor data. They also fail to justify any such exception to benchmarks by citing (p. 19, n. 34) Antelecom's purported reluctance to "reveal its cost data in this public forum." The *Benchmarks Order* addresses such

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12 *Id.* at ¶ 108.

13 *Id at* ¶ 107. Nor are Commenters correct in their claims (p. 16) that, because of the expatriation of income from the Netherlands Antilles, the Commission's use of per capita GNP "overvalues the actual state of economic development" in that country. In fact, the World Bank per capita GNP data used by the Commission excludes all income expatriated from a country by nonresidents. *See* The World Bank, *World Development Report 1996* at 224 (Technical Notes to Table 1 Basic Indicators) ("GNP measures the total domestic and foreign value added by residents. It comprises GDP [] plus net factor income from abroad, which is the income residents receive from abroad for factor services (labor and capital) less similar payments made to nonresidents who contribute to the domestic economy.") (emphasis added).

concerns by providing for evidence of higher costs to be submitted confidentially.[14] No such submission is made here.

The Commenters' cited cases also fail to justify any further exception to the $0.15 benchmark rate. *Functional Music v. FCC*, 274 F.2d 543 (D.C. Cir. 1959), and its progeny merely affirm that an underlying agency regulation can be addressed on appellate review of an order enforcing the underlying regulation even where judicial review was not sought when the underlying regulation was originally released. However, the underlying regulation here -- the *Benchmarks Order* -- was both appealed and upheld in its entirety by the D.C. Circuit.

The Commenters also cite several cases affirming an agency's authority to craft exception procedures to its general rules,[15] which is precisely what the Commission did in the *Benchmarks Order*. Indeed, the Commission has carefully crafted a standard for waiving the general rule in the *Benchmarks Order*, a standard specifically upheld by the D.C. Circuit and that the Commenters acknowledge they cannot meet.[16] Instead, the Commenters would have the Commission grant an exception to its carefully crafted waiver standard. Yet, as the D.C. Circuit has recognized in *WAIT Radio* -- the defining case addressing waivers of Commission rules -- the

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14 *Benchmarks Order*, ¶ 89.

15 For example, the Supreme Court in *U.S. v. Allegheny-Ludlum*, noted favorably that the Interstate Commerce Commission had established "a *procedure* by which exceptions [to the specific regulations being addressed on appeal] might be applied for." *U.S. v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 755 (1972) (emphasis added). Similarly, in *National Rural Telecom Assoc. v. FCC*, the D.C. Circuit approved the Commission's express policy to consider waivers of its general price cap regulations. *National Rural Telecom Assoc. v. FCC*, 988 F.2d 174, 181 (D.C. Cir. 1993).

16 Indeed, in upholding the *Benchmarks Order*, the D.C. Circuit specifically held that "the Commission's regulatory approach – prescribing general rules while allowing for exceptions – is not arbitrary and capricious." *Cable & Wireless*, 166 F.3d at 1233.

Commission's discretion to waive its general rules "does not contemplate that an agency must or should tolerate evisceration of a rule by waivers."[17] The D.C. Circuit further held that "the very essence of waiver is the assumed validity of the general rule."[18] The Commenters request for a "waiver of the waiver" would surely eviscerate the general rules set forth in the *Benchmarks Order*, and should be rejected.

III. The Commenters Improperly Seek to Exclude Certain Categories of IMTS Traffic from Benchmark Rates.

The *Benchmarks Order* makes clear that benchmark rates apply to all IMTS traffic, including U.S.-inbound calls and U.S.-outbound calls resulting from alternative routing services. By "link[ing] its acceptance" (p. 9) of benchmarks to "satisfactory settlement of related matters of concern" -- including the adoption of asymmetric rates and the exclusion from benchmarks of traffic resulting from call-back and reorigination --- the Commenters merely underscore Antelecom's continuing refusal to implement benchmark rates.

The *Benchmarks Order* squarely rejects the argument advanced here once again (pp. 22-23) that the benchmark rate should not apply to U.S.-inbound calls. The Commission found the alleged variation of costs among some countries -- which it believed to be "minimal in most cases" -- to be a relevant concern only "in a system where settlement rates are truly cost-based."[19] Although benchmark rates represent progress toward cost-based settlement rates, they

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17 *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

18 *Id.* at 1158.

19 *Benchmarks Order*, ¶ 117.

remain substantially above incremental cost.[20] The *Benchmarks Order* further emphasized that the 50/50 division of accounting rates required by the International Settlements Policy should continue to govern arrangements with dominant foreign carriers like Antelecom "to prevent the 'whipsawing' of U.S. carriers."[21]

The *Benchmarks Order* similarly precludes the Commenters' requested exclusion (p. 23) from benchmark rates of "agreed percentages" of call terminations representing traffic resulting from call-back and reorigination. Rather, the Order makes clear that foreign carriers should not receive above-cost subsidies from U.S. carriers for the termination of any IMTS traffic.[22]

Indeed, the *Benchmarks Order* specifically "reiterate[d]" the Commission's support for alternative routing services like callback, country direct services and others "that encourage alternatives to the traditional accounting rate system and increase competitive pressures in the global telecommunications market."[23] It further stated that these services "are not, as many commenters argue, the source of the 'problem' in the global market for international services. Rather, they are an economically rational response to the problem of inflated settlement rates and distorted tariffs. As long as settlement rates remain above cost,

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20 *Id.*, ¶¶ 44, 171.

21 *Id.*, ¶¶ 116-17. Commenters affirm that Antelecom is the monopoly long distance provider in Netherlands Antilles. Gomez Aff. at ¶ 1.

22 *See, e.g., id.* ¶ 286 ("We find that any settlement rates that exceed the relevant benchmark constitute an unjust and unreasonable 'charge' or 'practice' under Section 201.")

23 *Id.* ¶ 36, n.40. The Commission therefore rejected claims that it should "discourage alternative routing services" because of arguments that these services "contribute significantly to the U.S. net settlements payments." *Id.* , ¶ 35.

carriers in competitive markets will find methods to circumvent those rates to provide new services at competitive rates to their customers."[24] More recently, the Commission restated its support for U.S. "'services and technologies that bypass the settlements regime,' such as refile" and stated that "[w]e find it encouraging that such activity is putting pressure on settlement rates" in monopoly countries like Netherlands Antilles.[25]

Moreover, any increase in the U.S. settlement deficit with the Netherlands Antilles that may result from call-back and refile is irrelevant in this proceeding. As the *Benchmarks Order* emphasizes, the key concern to be addressed through enforcement of benchmark settlement rates is not the absolute level of the settlements deficit, but rather the anticompetitive subsidies contained in above-cost settlement rates -- which are ultimately borne

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24 *Id. See also, id* at ¶ 13 ("Our goal is to move to a nondiscriminatory and more cost-based structure for the termination of global telecommunications services so that market-generated shifts in the traffic balance do not continue to exacerbate the level of the U.S. settlements deficit. We do not believe it benefits consumers to arbitrarily restrict a carrier's ability to route traffic in the most economically efficient manner or to restrict the development of new technologies and routing methods.")

25 *Reform of the International Settlements Policy*, FCC 99-73, IB Docket No. 98-148 (rel. May 6, 1999) at ¶ 63.

by U.S. ratepayers in the form of higher prices.[26]

In sum, the Commission should reject the Commenters' attempts arbitrarily to exclude certain types of IMTS traffic from its benchmark rules.

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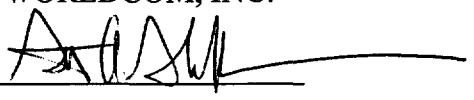
[26] *Id.*, ¶¶ 13, 36. In any event, the Netherlands Antilles government can seek assistance from the Commission to prevent illegal call back pursuant to the Commission's well-established call back policy. *See VIA USA*, 10 FCC Rcd 9540 (1995). In addition, Commenters' claim (pp. 28-29) that all traffic that neither originates nor terminates in the United States is not subject to the Commission's jurisdiction is incorrect. *See RCA Communications, Inc. v. United States*, 43 F. Supp. 851-855 (S.D.N.Y. 1942) (upholding Commission's jurisdiction over messages "originating abroad and terminating in or passing through the United States)(emphasis added).

IV. Conclusion

Accordingly, for the reasons set forth above, the Commission should dismiss the Commenters' arguments and act expeditiously to require all U.S. carriers to settle at the $0.15 benchmark rate for all traffic on the U.S.-Netherlands Antilles route effective January 1, 1999.

Respectfully submitted,

MCI WORLDCOM, INC.

By: 

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May 13, 1999

AFFIDAVIT OF ROBERT SANTANA

STATE OF NEW JERSEY)
) ss:
COUNTY OF SOMERSET)

ROBERT SANTANA, being duly sworn, deposes and says:

1. My name is Robert Santana. I am Regional Managing Director for Caribbean Operations for AT&T Corp. ("AT&T"), and have held this position since February 1, 1998. In this position, I am directly engaged in negotiating settlement rates with various AT&T foreign correspondents, including the correspondent in Netherlands Antilles, Antelecom N.V. ("Antelecom"). I am closely involved in AT&T's efforts to negotiate settlement rates with Antelecom in accordance with the benchmark rates established by the Commission's Report and Order in *International Settlement Rates*, 12 FCC Rcd. 19806 (1997), *aff'd sub nom. Cable & Wireless P.L.C. v. F.C.C.*, No. 97-1612, (D.C. Cir., Jan. 12, 1999) ("*Benchmarks Order*"). I am submitting this affidavit to provide the Commission with additional information concerning AT&T's repeated and unsuccessful good faith efforts to negotiate benchmark settlement rates with Antelecom.

2. I have read the Statement of Mr. Lyrio A.G. Gomez filed on May 3, 1999 as an appendix to the Joint Protective Comments of the Netherlands Antilles and Antelecom, N.V. In that statement, Mr. Gomez refers to efforts by Antelecom since late 1997 to negotiate revised operating agreements with U.S. carriers and states that "no agreement was ever reached on a final text." However, AT&T is still awaiting Antelecom's comments on the draft agreement AT&T provided for Antelecom's review during the summer of 1998. I wrote to Ir. H. J. Eikelenboom, Managing Director of Antelecom on

January 29, 1999 reminding him of this fact and stating: "[W]e have not received any input to date. I urge you to review that draft document and provide your comments to me at your earliest convenience." Notwithstanding my request, Antelecom has still provided no comments to AT&T on the draft agreement.

3. Mr. Gomez refers to AT&T's efforts at four meetings held in Netherlands Antilles during 1998 to obtain reductions in the settlement rate of $0.38 in effect since 1988. Specifically, AT&T proposed a settlement rate of $0.225 to be effective from July 1998 through December 1998 pending implementation of the $0.15 benchmark effective January 1, 1999. Although Antelecom repeatedly promised to provide a written response to AT&T's proposal, which was first presented in May 1998, no such response was ever provided. Representatives of Antelecom made clear in those meetings with AT&T, however, that Antelecom would not agree to reduce settlement rates to the $0.15 benchmark.

4. Since AT&T's last meeting with Antelecom in November 1998, I have made several unsuccessful efforts to continue negotiations. I reminded Mr. Eikelenboom in my letter of January 29, 1999 that AT&T wished to initiate immediate negotiations "leading to a new Service Agreement and a mutually agreed accounting rate, retroactive to January 1, 1999, within the parameters prescribed by the FCC Benchmark Order." I further stated that "I am prepared to meet with Antelecom at any time to negotiate a replacement Service Agreement, including the appropriate accounting rate for 1999 and beyond."

5. On two occasions following the November 1998 meeting, I have agreed to meet with Antelecom in the United States but Antelecom has cancelled at the last minute. Mr. Gomez acknowledges in his statement that Antelecom cancelled a meeting with AT&T

that had been mutually agreed to for March 2, 1999. He omits to mention that Antelecom also cancelled at the last minute a meeting that Antelecom had requested in New Orleans in December 1998.

6. Most recently, I attempted to arrange a meeting with Antelecom during the Global Traffic Meeting (GTM) held in Washington, D.C. from May 3-7, 1999, which Antelecom attended along with many other foreign carriers. I sent an e-mail to Mr. Gomez on April 30, 1999 asking if he was still planning to attend the GTM and proposing to use that opportunity to continue our negotiations on settlement rates. He responded that "we have decided to arrange a meeting with the carriers in the second halve [sic] of May. This meeting will be organized by our attorneys on the highest possible levels within the carriers organizations."

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Robert Santana

Sworn to before me this

2nd day of May, 1999

Notary Public

Terri Iannotta
Notary Public
Expires 4/08/2002

CERTIFICATE OF SERVICE

I, Crystal Dixon, hereby certify that a copy of the foregoing Reply of AT&T, MCI WorldCom, and Sprint was sent by messenger or by United States first-class mail, postage prepaid, on this the 13th day of May, 1999 to the parties on the attached service list.

Crystal Dixon

May 13, 1999

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